

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 872 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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KANUBHAI JAGABHAI TADVI

Versus

STATE OF GUJARAT

Appearance:

MR RM PARMAR for Appellant
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 26/06/2002

ORAL JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. This appeal has arisen from a judgment and order

passed by the learned Addl. Sessions Judge, Baroda, on 30th October, 2001, in Sessions Case No. 318/2000. The present appellant was accused in the said case.

2. As per the facts of the case, a complaint of this case has been lodged by victim Anitaben Tadvī aged about 12. Anitaben Tadvī resided with her parents at village Nasvadi, Raval Falia. On 10.8.2000 at about 3'0 clock in the afternoon Anitaben and his minor nephew Laxmanbhai both had been to the bank of River Ashwini for collecting wood sticks for cooking. While they were collecting wood sticks, at about 4.00 p.m., present appellant came there and caught hold of Anita and after threatening her, Anita was raped by the present appellant under the bushes on the bank of river. The appellant took off the clothes of Anita and committed rape. Anita attempted to shout but her mouth was gagged by the present appellant. The appellant also threatened Laxman to kill him and, therefore, Laxman ran away from the spot. After sometime prosecution witness Ukedbhai Tadvī brother of Anita came there and appellant made Anita stand up and she was released by the accused appellant. Anita went home crying and conveyed to her parents what had happened. Thereafter, on the same day, a complaint came to be lodged by Anita before Nasvadi Police Station. The investigation of the offence was carried out by Pramodsinh Fatesinh Gohil, the then Police Sub-Inspector at Nasvadi Police Station. After investigation, a charge sheet against the accused came to be filed under Sections 376, 363, 366, 504, 506(2) of the Indian Penal Code. The case was thereafter committed to the Court of Sessions and vide Exh.6 a charge was framed for the above said offences against the accused, to which the accused pleaded not guilty. Accused was tried thereafter and ultimately after hearing the parties, learned Addl. Sessions Judge, Baroda, vide his judgment and order dated 30th October, 2001, acquitted the appellant for the offences punishable under Sections 363, 366, 504, 506(2) of the Indian Penal Code, while the appellant was convicted for the offence proved under section 376 of the IPC and he was sentenced to life imprisonment with a fine of Rs. 2,000/- in default, one month rigorous imprisonment. It was also directed that out of the amount of fine, an amount of Rs. 1,500/- be paid to the victim minor Anita.

3. Being aggrieved and dissatisfied with the above said order and judgment of conviction, this Appeal through jail, has been preferred by the appellant original accused.

4. To prove the case, the prosecution examined as many as 11 witnesses, namely, (1) Anitaben Tadvi, (2) Chhanabhai Tadvi, (3) Bupendra Kiranlal Jaisval, (4) Jayantibhai Chandubhai Tadvi, (5) Manjulaben Kanubhai Tadvi, (6) Manojkumar Jayantilal Suthar, (7) Ukedbhai Chhitubhai Tadvi, (8) Dr. Nirav Ramakant Parikh, (9) Dr. Brijesh Shyamkumar Vyas, (10) Jagadishchandra Bodidas Jaisval and (11) Pramodsinh Fatehsinh Gohil.

5. In addition to this, prosecution also produced documentary evidence.

6. Learned Advocate for the appellant was heard at length at this admission stage.

7. We have gone through the record and proceedings of the case extensively. We have scrutinised and re-appreciated the evidence of prosecutrix as well as the evidence of other witnesses and have taken into consideration other documentary evidence on record. The star witness in the case is prosecutrix. The evidence of witness Jagadishchandra Bodidas Jaisval - Exh.30 clearly establishes that the date of birth of Anita is 13.6.1989. This witness at the relevant time was Principal of Primary Girls School at Nasvadi. He produced the School Leaving Certificate of Anita and has proved that at the time of offence committed by the appellant, Anita was aged about 12 years.

8. Referring to the evidence of Anita - Exh.10, it clearly appears that since the prosecutrix was tender age, the trial court satisfactorily endeavoured to ascertain whether she was capable of giving evidence. She was administered oath also. She deposed that with her parents she was staying at village Nasvadi Raval Falia and studied upto IVth Std. She identified the appellant as offender. She states that the incident occurred on 10th of August, 2000, on that day, she had observed 'dharam-vrat'. She had been to bank of river Ashwini to collect wood sticks for cooking. Laxman was with her. Laxman happens to be the son of witness Ukedbhai who is brother of the prosecutrix. At about 3.00 p.m. she had been to the bank of river Ashwini and about 4.00 p.m. appellant came from behind and caught hold of her and gagged her mouth and dragged her behind the bushes. She was undressed by the appellant and on throat and other parts of body, appellant injured her by nail injuries and committed rape with her. She attempted to shout but she was gagged by the appellant and appellant also threatened her to kill. Laxman also was threatened to kill by the appellant and, therefore,

Laxman had run away from the spot. After some time, her brother Ukedbhai came to the spot and on seeing Ukedbhai the appellant ran away from the spot releasing her. She conveyed the occurrence to her parents and thereafter a complaint was lodged at Nasvadi Police Station which is on record at Exh.11. Thereafter, she was sent to the dispensary by the police. She was examined by the Doctor, her clothes were also given to the Doctor. She identified her clothes from muddamal. She was extensively cross-examined by the defence but nothing could be found from the cross-examination to disbelieve the prosecutrix. In the cross examination, mostly she was faced with the question that there was some enmity between the accused appellant and the father of the prosecutrix and hence this false complaint had been lodged. The defence also attempted to advance a theory that she was committing sexual act with Laxman and since the appellant witnessed the same, the appellant was falsely involved in the case though prosecutrix emphatically denied all these allegations. This suggestion of the defence is futile since Laxman was aged only 11 years. The medical evidence of this Doctor establishes that (1) an 11-12 year old boy would not ejaculate sperm and (2) semen and sperm was found on the knicker of the complainant. Hence, nothing could be established from the cross-examination of the prosecutrix to even suggest that the prosecutrix had involved the appellant in a false case of rape. It is difficult to even conceive that the prosecutrix and her parents would allow the real culprit to escape and falsely involve the innocent person for the commission of the crime like rape. This is more so because in rape cases, the whole reputation and future life remains at a stake for the prosecutrix. Therefore, the suggestion made in the cross-examination has no evidentiary value at all and scrutinising and re-appreciating the evidence of the prosecutrix, it clearly appears that the appellant could have been convicted solely on the testimony of the prosecutrix. When the evidence of prosecutrix inspires confidence, the conviction can be based on the sole testimony of prosecutrix in rape cases.

9. But, in this case, while we examined and re-appreciated the evidence further, we find plenty of corroboration in support of the say of the prosecutrix. The Doctor who examined the prosecutrix is examined as witness on record at Exh.23. He specifically deposes that on 10.8.2000, he was the Medical Officer at Primary Health Centre, Nasvadi. At about 7.15 p.m. in the evening Anita was brought to him with a police yadi. She had a history of rape committed upon her. Her clothes

were seized and examined and underwear found human semen. Not only that according to the deposition of Doctor who had examined Anita, only few hours after the occurrence, found that Anita had injuries of nail marks on throat, on back and on inside of thigh. Vaginal swab was collected by the Doctor. Vaginal swab so collected revealed the presence of human sperm mixed with blood. Though the Doctor found the hymen was not ruptured but the FSL report denotes that vaginal swab obtained from prosecutrix contained blood cells along with the human semen. This fact necessarily goes to establish that Anita had injuries on her private parts and inside of thigh. The Doctor also supports the case of the prosecutrix that while committing rape, the appellant caused injuries to her on different parts of body. Therefore, the evidence of Dr. Nirav Parikh, Exh. 23 in all respects corroborates the say of the prosecutrix.

10. Yet more corroboration is found on the scrutiny of the evidence and that is the evidence of Ukedbhai Tadvi, recorded at Exh.22. It is the case of the prosecution that while the appellant was raping the prosecutrix, Ukedbhai came to the incident and on seeing Ukedbhai, the appellant ran away from the spot. Witness Ukedbhai in his deposition - Exh.22 in material particulars supports the say of the prosecutrix and the prosecution story. Minor contradictions have been attempted to be magnified by the defence but those contradictions are not material because the attempted contradiction is regarding whether Ukedbhai came to the spot at the instance of Laxman or not. In the evidence Ukedbhai proved that he came to the spot at the instance of Laxmanbhai and so the appellant fled away from the spot and Ukedbhai found Anita in bad shape at the spot of offence. The presence of Ukedbhai at the spot was natural because Laxman, his own son, immediately conveyed to his father that what had happened. Ukedbhai was doing labour work, as per his deposition, and about 4.00 p.m. Laxman came to him. Being the brother of the prosecutrix it was quite natural for this witness to immediately run to the spot. It has come in the cross-examination of this witness that he was at the distance of 10.00 minutes from the place of incident. The field where he was doing labour work was situated near the place of incident.

11. In addition to this, prosecution was able to prove that the blood group of accused was 'B' and prosecution was further able to establish through Forensic Science Laboratory Record - Exh.36 that in vaginal swab collected from the person of the prosecutrix, 'B' group human semen was found and on the

underwear of Anita also human semen of 'B' group was found.

12. In addition to the above voluminous trustworthy evidence, prosecution has also produced and proved the panchnama of scene of offence. The prosecution was also able to prove through Dr. Birjesh Vyas, Exh.27 that the appellant was capable of sexual intercourse, the prosecutrix has proved her complaint lodged before the police, which is at Exh.11.

13. Against the above case of the prosecution, it was contended that there are some contradictions in the deposition of prosecutrix and Ukadbhai. As said above, these contradictions are minor in nature to the extent only that Anita deposed that when Ukadbhai came to the spot, the accused - appellant ran away while Ukadbhai in his deposition says that on seeing him appellant ran away. This is not the contradictions which goes to the root of the prosecution case. It is also not material as contended that whether the appellant had taken out his pant fully and whether the appellant had ran away with his pant or not. Minor omissions on the part of the prosecutrix as regards how her mouth was gagged are also not material at all in consideration and appreciation of evidence against the accused. The main contention was, Laxman who accompanied prosecutrix at the bank of river Ashwini was not examined by the prosecution. This contention has no force because Laxman at the relevant time was mere child and the rule of law is, the evidence of prosecutrix needs no corroboration at all if the said evidence inspires confidence. Non-examining Laxman therefore cannot by any stretch of reasoning be said to be fatal to the prosecution case. The record, as we examined, reveals that the same appellant is previously convicted also for the same offence of rape and has been sentenced to life imprisonment. This is evident from the judgment. When appellant was heard about the quantum of punishment by the learned Trial Judge, appellant admitted that he was previously convicted for the similar offence by Addl. Sessions Judge, Baroda.

14. Re-appreciating the whole evidence in the matter, we find that the Trial Court has rightly interpreted and appreciated the evidence and has come to just conclusion to convict the accused for the offence under Section 376 of the IPC and sentenced him to life imprisonment. No other point has arisen which can be considered in this appeal.

15. We, therefore, find no reason to interfere with the conclusion arrived at by the Trial Court and accordingly this appeal is dismissed.

(Y.B. Bhatt, J.)

(J.R. Vora, J.)

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